

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE

April 4, 2003

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Park Hyatt Los Angeles (Century City) on April 4, 2003. Attendance was as follows:

MEMEBERS PRESENT:

Keith Paul Bishop
John C. Carpenter
Bruce Dravis
James K. Dyer, Jr.
Timothy J. Fitzpatrick
James F. Fotenos
Steven K. Hazen
Mark T. Hiraide
John H. Marlow
Keith B. Martin
Brian D. McAllister
Stewart Laughlin McDowell
Cynthia Ribas
Randall Brent Schai
James R. Walther
Neil J Wertlieb
Nancy Wojtas
Brian Wong

MEMBERS ABSENT:

Curt C. Barwick
Nelson D. Crandall
Teri Shugart Erickson
Victor Hsu
Ethna M. S. Piazza
David M. Pike
Daniel J. Weiser

LIAISONS AND GUESTS PRESENT:

Betsy Bogart, Secretary of State
R. Bradbury Clark, Nonprofit Organizations Committee
Mark S. Edwards, Edwards Advisory Group
William T. Gay, Executive Committee
Jerry Grossman, Executive Committee
Brian A. Lebrecht, The Lebrecht Group
Steven B. Stokdyk, Sullivan & Cromwell LLP

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda, which are not described in these minutes.

I. ADMINISTRATIVE MATTERS.

A. Opening Remarks and Announcements. The meeting was called to order by Co-Chair Bruce Dravis at approximately 10:15 a.m. Mr. Dravis requested the persons in attendance to briefly introduce themselves. Co-Chair Bishop congratulated Bill Gay on his recent appointment as the Chair of the Business and Corporate Law Section of the Orange County Bar Association.

B. Minutes of March 7, 2003 Meeting. Mr. Dyer reported that a few minor clerical comments to the draft minutes of the meeting of the Committee held on March 7, 2003 were received from Gayle Oshima, California Department of Corporations, prior to the meeting. The minutes of the March 7, 2003 meeting previously circulated to the members, with minor revisions to address the comments received by Mr. Dyer prior to the meeting, were approved by the Committee.

II. LIAISONS' REPORTS AND DISCUSSION.

A. Business Law Section Executive Committee. Bill Gay reported that the Committee's draft response letter to the Securities and Exchange Commission ("SEC") pertaining to proposed Rule 205 was very well received by the Executive Committee. Jerry Grossman informed the Committee that the chairpersons of each of the standing committees have received an email that includes a list a proposals being considered by the California Law Revision Commission ("Law Revision Commission"). Comments to these proposals are due by May 2, 2003.

B. Secretary of State. Betsy Bogart, Supervising Staff Counsel, Office of the California Secretary of State, provided an update of current events concerning the Secretary of State. Ms. Bogart briefly discussed AB 55 filings. Noting that the quality of AB 55 filings appears to be improving, Ms. Bogart informed the Committee that dollar amounts must be included in the appropriate boxes instead of referencing an attachment such as a portion of a 10K. Ms. Bogart reminded the Committee that the AB 55 form provides a place for explanations and additional information if deemed appropriate. Ms. Bogart also reported that the Secretary of State is currently drafting regulations relating to the victims' fund created by AB 55. Ms. Bogart noted that the Office of the Secretary of State was experiencing an unusually high backlog of filings made up primarily of Statements of Officers. Ms. Bogart estimated that the current turnaround time for over-the-counter filings for Articles, Amendments and Mergers has increased to five or six days, and encouraged everyone to consider expedited service for time-sensitive filings.

C. Partnerships and LLC Committee and FASB Reporter. Steve Hazen provided a brief update on recent events concerning the Partnerships and LLC Committee. Mr. Hazen reported that the LLC Committee's last meeting centered around the Re-Revised Uniform Limited Partnership Act. Mr. Hazen also reported that FASB is implementing a no action procedure regarding FASB Interpretation Number 46, *Consolidation of Variable Interest Entities*. Co-Chair Bishop briefly discussed the accounting treatment of stock options under certain conditions.

D. UCC Committee. Jim Fotenos reported on the recent activities of the UCC Committee, including (i) the analysis of revisions to Articles 1, 3, 4 and 9 of the Uniform Commercial Code advocated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”), and (ii) the discussion of SB 283 (Sher) relating to proposed amendments to Section 9102, 9304 and 9309 of the California Commercial Code relating to security interests in lottery winnings. Mr. Fotenos informed the Committee that the UCC Committee’s task force on legal opinions is in the process of reviewing drafts of its opinion report and is sponsoring a program at the BLS Spring Meeting on legal opinions under revised Article 9. The UCC Committee is also involved with the automation project of the Secretary of State.

E. Nonprofit Organizations Committee. Brad Clark provided an overview of the Nonprofit Organizations Committee’s recent activities. Mr. Clark reported that the committee has been actively working on preparing proposed revisions to our Committee’s electronic communications legislative proposal to apply nonprofits as well. The committee has also been working with the Law Revision Commission in connection with its tentative recommendation concerning the Uniform Unincorporated Associations Act adopted by NCCUSL. Mr. Clark mentioned that the Law Revision Commission has certain information that it would like to distribute to unincorporated associations and requested the Committee’s assistance in identifying unincorporated associations for purposes of the mailing.

III. PENDING LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS

A. Report on Legislation. Jim Fotenos presented a summary of pending legislation in California, noting that many hearings were scheduled for later in the month. Among others, Mr. Fotenos discussed (i) SB 735 (Ackerman) relating to the removal of the sunset provision concerning the use of video screen communication equipment by a board of directors, and (ii) AB 1101 (Steinberg) relating to the amendment of Business & Professions Code Section 6068(e) to permit disclosure of attorney-client communications when necessary to prevent a criminal act likely to result in death or substantial bodily harm to an individual. Co-Chair Bishop briefly discussed AB 664 (Correa), which would codify certain portions of the Sarbanes-Oxley Act of 2002, SB 665 (Correa), which would codify certain New York Stock Exchange corporate governance provisions, and SB 917 (Alarcon), also known as the dignity bill, which would dramatically expand the scope of fiduciary duties of directors.

B. Secretary of State Fax Filings (SB 220). Co-Chair Dravis provided a brief status report on the Committee’s fax filing bill. The bill has been approved by the Senate Judiciary Committee and is being considered by the Senate Appropriations Committee. Mr. Dravis reported that Senate staff discussed the possibility of amending the bill to provide a notary requirement for fax filings. After discussions, the Senate staff decided not to pursue such an amendment to the bill.

C. Finance Lenders Law (AB 169). Co-Chair Bishop provided a summary of recent events pertaining to the Committee’s legislative proposal to amend the finance lenders law. Mr. Bishop mentioned that the National Venture Capital Association issued a communication to its members regarding the licensing issue in the State of California under the finance lenders law. Mr. Bishop reported that the bill is making progress.

Discussions with the Department of Corporations (“Department”) are ongoing in an effort to respond to its concerns regarding the bill. Mr. Bishop distributed a draft of potential exceptions designed to respond to the issues raised by the Department. The proposed exceptions were discussed at length by the Committee.

IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS

A. Electronic Communications. Brian McAllister and Randy Schai provided an overview of the revised legislative proposal concerning electronic communications that was included in the meeting materials distributed to the Committee members prior to the meeting. The proposal relates to electronic communications to and from a corporation. A detailed discussion followed, including the applicability of Esign, UETA and ECITA. The Committee also discussed the appropriate corporate authorization process. It was suggested that the proposal be distributed to certain others for comment, including the Partnerships and LLCs Committee and the Cyberspace Law Committee. The distribution of the Committee’s draft proposal to such other persons, however, will not delay the Committee’s submission of this proposal to the Executive Committee beyond this year’s deadline. The Committee approved the draft proposal and authorized its submission to the Executive Committee for approval in substantially the form previously distributed to the Committee immediately prior to the meeting with any changes deemed necessary or appropriate by the authors.

V. WEBSITE PROJECTS

A. Website Update. Co-Chair Bishop reported that the Committee received several compliments for its website at the recent officers’ retreat of the Business Law Section. Brian McAllister requested the members of the Committee to submit short summaries of current events and practical suggestions for posting to the Committee website. Brian McAllister also suggested that the Committee expand and improve the links that it has on its Website.

VI. OTHER PROJECTS

A. Opinion Project. In Nelson Crandall’s absence, Co-Chairs Bishop and Dravis shared with the Committee their observations regarding the role of the Opinions Committee from the recent Business Law Section officers’ retreat. After discussing this topic with John Powers and Morris Hirsch, the Opinions Committee appears to be focusing primarily on the remedies opinion and the differences in approach between the east coast and the west coast. In light of the Opinions Committee’s limited focus, Co-Chairs Bishop and Dravis suggested that the Committee reassess its opinions project. Jerry Grossman, a member of both the Executive Committee and the Opinions Committee, provided an overview of the division of responsibility between the Opinions Committee and each of the other standing committees, and emphasized the importance and usefulness of the *Blue Book*. Recognizing that the Committee’s report has not been updated since 1989, Mr. Grossman noted that there have been significant changes in opinions practice over the last decade. A discussion of the scope of the Committee’s project in light of the activities of the Legal Opinions Committee followed. Brian Wong, Jim Fotenos, John Carpenter and Nelson Crandall were appointed to the opinion project

subcommittee to reevaluate the scope and objectives of the opinions project and to propose a process and timeline for implementation.

B. Educational Activities. Co-Chair Bishop reported that two of the three programs proposed by the Committee for the California Bar Association Annual Convention were accepted. The third program, dealing with engagement letters, will be given at the Winter Educational Institute.

C. Blue Sky Guide. Keith Bishop reported that the *Blue Sky Guide* has been completed and the State Bar is considering options for its publication. Because the *Blue Sky Guide* is current only through 2001, however, the Committee discussed the importance of updating it through 2002 in a timely manner. Mark Hiraide volunteered to update the *Blue Sky Guide*. Another member of the Committee will be sought to assist Mr. Hiraide with the update. The Committee would like to complete the update by June 1, 2003.

D. Comment Letter on Revised SEC Proposal Regarding Attorney Conduct. Co-Chair Bishop thanked Jim Fotenos for the extensive work that he performed on the Committee's Sarbanes-Oxley comment letter.

VII. NEW BUSINESS.

A. Practice Issues. Randy Schai discussed recent regulations adopted by the Internal Revenue Service relating to the reporting of tax shelters and their potential impact on common transactions not involving tax shelters (including those containing confidentiality provisions).

B. Corporate Governance Curriculum Project. Co-Chair Dravis provided a brief overview of the proposed corporate governance curriculum project. John Marlow, Stewart McDowell and Neil Wertlieb volunteered to assist with the project.

C. Secretary of State Filing Backlog. Co-Chair Dravis reported that the Secretary of State is experiencing an unusually high backlog due to staffing issues.

D. Nevada Version of AB 55. Co-Chair Bishop reported that although additional disclosure legislation is contemplated in Nevada, the legislation is not anticipated to be modeled after AB 55 and is expected to be in an abbreviated form.

The meeting was adjourned at approximately 1:15 p.m.

James K. Dyer, Jr., Secretary